

AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2647

**Introduced by Assembly Members Eduardo Garcia and Medina
(Principal coauthors: Assembly Members Brown, Chu, and Dodd)**

February 19, 2016

An act to add Section 18410.3 to, and to add and repeal Sections 12283, 17053.9, and 23622.9 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2647, as amended, Eduardo Garcia. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

Existing federal law allows a New Markets Tax Credit to a taxpayer holding a qualified equity investment in an amount equal to the applicable percentage of the amount paid to the qualified community development entity for investment in low-income communities.

The state Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing state constitutional law governing insurance taxation imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

Existing law establishes the Governor's Office of Business and Economic Development, also known as "GO-Biz," to, among other things, serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

This bill would allow a California New Markets Tax Credit under the Personal Income Tax Law, the Corporation Tax Law, and the law governing insurance taxation, in modified conformity with the federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to \$40,000,000 per calendar year. The bill would impose specified duties on the Responsible Tax Credit Administrator (RTCA), to be designated by the Governor, with regard to the application for, and allocation of, the credit. The bill would require the RTCA to establish and impose reasonable fees upon entities that apply for the allocation of the credit, to be deposited in the California New Markets Tax Credit Fund established by the bill, and use the revenue, upon annual appropriation by the Legislature, to defray the cost of applying to and administering the credits, as specified. The bill would only authorize the allocation for these credits for those taxable years for which moneys are appropriated to the RTCA to administer these credits for those taxable years.

Existing law requires any bill authorizing a new personal or corporation income tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements, as provided.

This bill would also include that additional information required for any bill authorizing a new personal or corporation income tax credit.

The bill would provide that its provisions are severable.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) While many areas of California have recovered from the
- 3 economic and community development impacts of the 2006
- 4 Financial Crisis and the 2010 global recession, Californians in a
- 5 number of communities and neighborhoods are still experiencing
- 6 their lingering effects. In some cases this has resulted in small and
- 7 medium businesses in low-income areas lacking sufficient access
- 8 to capital and technical assistance. Given that the state has many

1 needs and limited resources, moneys from the private sector are
2 necessary to fill this capital and investment gap.

3 (b) Initially enacted in 2000, the federal government established
4 the New Markets Tax Credit (NMTC) Program, which uses a
5 market-based approach for expanding capital and technical
6 assistance to businesses in lower income communities. The federal
7 program is jointly administered by the Community Development
8 Financial Institutions Fund (CDFI Fund) and the Internal Revenue
9 Service. The NMTC Program allocates federal tax incentives to
10 community development entities (CDE), which they then use to
11 attract private investors who contribute funds that can be used to
12 finance and invest in businesses and develop real estate in
13 low-income communities. Through the 2013–14 funding round,
14 the CDFI Fund had awarded approximately forty billion dollars
15 (\$40,000,000,000) in NMTC in 836 awards, including three billion
16 dollars (\$3,000,000,000) in American Recovery and Investment
17 Act of 2009 awards and one billion dollars (\$1,000,000,000) of
18 special allocation authority to be used for the recovery and
19 redevelopment of the Gulf Opportunity Zone.

20 (c) Since 2003, the NMTC Program has created or retained an
21 estimated 197,585 jobs nationally. It has also supported the
22 construction of 32.4 million square feet of manufacturing space,
23 74.8 million square feet of office space, and 57.5 million square
24 feet of retail space. The United States Department of the Treasury
25 reports that a secondary benefit is that as these communities
26 develop, they become more attractive to investors, catalyzing a
27 ripple effect that spurs further investments and revitalization.

28 (d) For every one dollar (\$1) invested by the federal government,
29 the NMTC Program generates over eight dollars (\$8) of private
30 investment. The NMTC Program catalyzes investment in the most
31 economically challenged areas of the state. Over 75 percent of
32 New Markets Tax Credit investments have been made in highly
33 distressed areas, meaning the household income was less than 60
34 percent of statewide median income and the poverty rate was higher
35 than 30 percent.

36 (e) The federal NMTC totals 39 percent of the original
37 investment amount in the CDE and is claimed over a period of
38 seven years (5 percent for each of the first three years and 6 percent
39 for each of the remaining four years). Any investment by any

1 taxpayer in the CDE redeemed before the end of the seven-year
2 period will be recaptured.

3 (f) Fourteen states in the United States have adopted state
4 programs using the NMTC model including Alabama, Florida,
5 Illinois, Nevada, and Oregon. While some of the programs
6 substantially mirror the federal program, others vary in both the
7 percentage of the credit and some of the policies that form the
8 foundation of the credit. One of the reasons cited for establishing
9 state-level programs is to make a state more attractive to CDEs,
10 which results in increasing the amount of federal NMTCs being
11 utilized in a state. Further, several studies, including a January 1,
12 2011, case study by Pacific Community Ventures, showed that for
13 every dollar of forgone tax revenue, the federal NMTC leverages
14 twelve dollars (\$12) to fourteen dollars (\$14) of private investment.

15 SEC. 2. Section 12283 is added to the Revenue and Taxation
16 Code, to read:

17 12283. (a) There is hereby created the California New Markets
18 Tax Credit Program as provided in this section, Section 17053.9,
19 and Section 23622.9. The purpose of this program is to stimulate
20 private sector investment in lower income communities by
21 providing a tax incentive to community *and economic* development
22 entities that can be leveraged by the entity to attract private sector
23 investment that in turn will be deployed by providing financing
24 and technical assistance to small- and medium-sized businesses
25 and the development of commercial, industrial, and community
26 development projects, including, but not limited to, facilities for
27 nonprofit service organizations, light manufacturing, and mixed-use
28 and transit-oriented development. RTCA shall administer this
29 program as provided in this section, Section 17053.9, and Section
30 23622.9.

31 (b) (1) For taxable years beginning on or after January 1, 2017,
32 and before January 1, 2022, and subject to subdivision (h), there
33 shall be allowed as a credit against the tax described in Section
34 12201, in an amount determined in accordance with Section 45D
35 of the Internal Revenue Code, relating to the new markets tax
36 credit, as modified in this section.

37 (2) For the purposes of this section, “RTCA” means the
38 Responsible Tax Credit Administrator, as designated by the
39 Governor.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for “(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates” with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating to qualified community development entity, is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code, relating to special rules for certain organizations, is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting “any low-income community in California” for “any low-income community” every place it appears in Section 45D of the Internal Revenue Code.

(B) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15

1 percent or more of its annual revenue from the rental or sale of
2 real estate. This exclusion does not apply to a business that is
3 controlled by, or under common control with, another business if
4 the second business: (i) does not derive or project to derive 15
5 percent or more of its annual revenue from the rental or sale of
6 real estate; and (ii) is the primary tenant of the real estate leased
7 from the first business.

8 (C) A qualified active low-income community business shall
9 only include a business that, at the time the initial investment is
10 made, has 250 or fewer employees and is located in one or more
11 California low-income communities. The operating business shall
12 meet all other conditions of a qualified active low-income
13 community business, except as modified by this paragraph. This
14 requirement does not apply to a business that is located on land
15 and is controlled by, or under common control with, a federally
16 recognized tribe.

17 (D) A qualified active low-income community business shall
18 only include a business located in census tracts with a poverty rate
19 greater than 30 percent, or census tracts, if located within a
20 nonmetropolitan area, with a median family income that does not
21 exceed 60 percent of median family income for this state, or census
22 tracts, if located within a metropolitan area, with a median family
23 income that does not exceed 60 percent of the greater of the
24 California median family income or the metropolitan area median
25 family income, or census tracts with unemployment rates at least
26 1.5 times the national average.

27 (E) A qualified active low-income community business shall
28 not include any business that operates or derives revenues from
29 the operation of a country club, gaming establishment, massage
30 parlor, liquor store, or golf course.

31 (F) A qualified active low-income community business shall
32 not include a sexually oriented business. A “sexually oriented
33 business” means a nightclub, bar, restaurant, or similar commercial
34 enterprise that provides for an audience of two or more individuals
35 live nude entertainment or live nude performances where the nudity
36 is a function of everyday business operations and where nudity is
37 a planned and intentional part of the entertainment or performance.
38 “Nude” means clothed in a manner that leaves uncovered or visible,
39 through less than fully opaque clothing, any portion of the genitals

1 or, in the case of a female, any portion of the breasts below the
2 top of the areola of the breasts.

3 (G) A qualified active low-income community business shall
4 not include a charter school.

5 (4) Section 45D(f) of the Internal Revenue Code, relating to
6 national limitation on amount of investments designated, is
7 modified as follows:

8 (A) The following shall apply in lieu of the provisions of Section
9 45D(f)(1) of the Internal Revenue Code: The aggregate amount
10 of qualified equity investments that may be allocated in any
11 calendar year for purposes of this section, Section 17053.9, and
12 Section 23622.9 shall be forty million dollars (\$40,000,000) per
13 calendar year. The allocation of any undesignated qualified equity
14 investments shall be returned to RTCA by March 1 of the year
15 following allocation and the value of the undesignated qualified
16 equity investment shall be available for allocation in the following
17 calendar years in accordance with the application process. Any
18 qualified equity investment attributable to recaptured credits shall
19 be available to RTCA on March 1 of the year following recapture
20 and shall be available for allocation in the following calendar years
21 in accordance with subparagraph (B) of paragraph (5). Reallocated
22 qualified equity investments attributable to recapture credits shall
23 not count against the annual or the cumulative limit.

24 (B) The references to “the Secretary” in Section 45D(f)(2) of
25 the Internal Revenue Code, relating to allocation of limitation, is
26 modified to read “RTCA.”

27 (C) The last sentence of Section 45D(f)(3) of the Internal
28 Revenue Code, relating to carryover of unused limitation, shall
29 not apply.

30 (5) Section 45D(g)(3) of the Internal Revenue Code, relating
31 to recapture event, is modified to add the following:

32 (A) The qualified community development entity fails to comply
33 with subparagraph ~~(C)~~ (D) of paragraph (5) of subdivision (d). In
34 this case, recapture shall be 100 percent of the credit.

35 (B) RTCA shall establish a process, in consultation with the
36 Department of Insurance, for the recapture of credits allowed under
37 this section from the entity that claimed the credit on a return.

38 (C) Recaptured qualified equity investments revert back to
39 RTCA and shall be reissued. The reissue shall not count toward

1 the annual or cumulative allocation limitation. The reissue shall
2 be done in the following order:

3 (i) First, pro rata to applicants whose qualified equity investment
4 allocations were reduced pursuant to subparagraph ~~(D)~~ (E) of
5 paragraph (5) of subdivision (d) by the annual allocation limitation.

6 (ii) Thereafter, in accordance with the application process.

7 (D) Enforcement of each of the recapture provisions shall be
8 subject to a six-month cure period.

9 (d) (1) RTCA shall adopt guidelines necessary or appropriate
10 to carry out its responsibilities with respect to the allocation,
11 monitoring, and management of the tax credit program authorized
12 by this section.

13 (2) (A) RTCA shall establish and impose reasonable fees upon
14 entities that apply for the allocation pursuant to this subdivision
15 that in the aggregate defray the cost of reviewing applications for
16 the program. RTCA may impose other reasonable fees upon entities
17 that receive the allocation pursuant to this subdivision that in the
18 aggregate defray the cost of administering the program.

19 (B) The fees collected shall be deposited in the California New
20 Markets Tax Credit Fund established in Section 18410.3.

21 (3) In developing guidelines, RTCA shall adopt an allocation
22 process that does all of the following:

23 (A) Creates an equitable distribution process that ensures that
24 low-income community populations across the state have an
25 opportunity to benefit from the program.

26 (B) Sets minimum organizational capacity standards that
27 applicants must meet in order to receive an allocation of authority
28 to designate qualified equity investments, including, but not limited
29 to, its business strategy, targeted community outcomes,
30 capitalization strategy, and management capacity.

31 (C) Considers the qualified community development entity's
32 prior qualified low-income community investments under Section
33 45D of the Internal Revenue Code.

34 (D) Considers the qualified community development entity's
35 prior qualified low-income community investments under this
36 section, including subparagraph ~~(C)~~ (D) of paragraph (5).

37 (4) (A) Subject to subdivision (h), RTCA shall begin accepting
38 applications on or before May 15, 2017, and shall award authority
39 to designate qualified equity investments annually through ~~2022~~.
40 2021.

1 (B) In the instance where RTCA determines that an application
2 is incomplete, the qualified community development entity shall
3 be given five business days to provide the omitted information.

4 (5) (A) In the 2017 awards cycle, RTCA shall award authority
5 to designate qualified equity investments to qualified community
6 development entities described in paragraph (2) of subdivision (c)
7 in the order applications are received by RTCA. Applications
8 received on the same day shall be deemed to have been received
9 simultaneously.

10 (B) In the 2018 to ~~2022~~ 2021 award cycles, inclusive, at least
11 60 percent of the authority to designate qualified equity investments
12 shall be awarded pursuant to subparagraph (A). At the discretion
13 of RTCA, a higher percentage of authority to designate qualified
14 equity investments may be awarded pursuant to subparagraph (A).

15 (C) RTCA shall award up to 40 percent of the authority to
16 designate qualified equity investments in the 2018 to ~~2022~~, 2021,
17 inclusive, award cycles, to qualified community development
18 entities on a competitive basis that meets the following criteria:

19 (i) Awards shall be reviewed using blind scoring and a review
20 committee that is composed of community development finance
21 practitioners and members having demonstrated experience in
22 assessing organizational business strategy, community outcomes,
23 capitalization strategy, and management capacity.

24 (ii) A member of the review committee shall not have a financial
25 interest, which includes, but is not limited to, asking, consenting,
26 or agreeing to receive any commission, emolument, gratuity,
27 money, property, or thing of value for his or her own use, benefit,
28 or personal advantage for procuring or endeavoring to procure for
29 any person, partnership, joint venture, association, or corporation
30 any qualified equity investment or other assistance from any
31 applicant.

32 ~~(iii) Applications for awards shall include a commitment to~~
33 ~~make at least 15 percent of qualified community development~~
34 ~~investments to a qualified community development entity with the~~
35 ~~assistance of a nonprofit organization, as documented by a~~
36 ~~cooperation agreement that states the terms and conditions of that~~
37 ~~assistance. For the purposes of this clause, the following shall~~
38 ~~apply:~~

39 ~~(I) A qualified community development entity shall be certified~~
40 ~~under Section 45D of the Internal Revenue Code but has not~~

1 received a federal New Markets Tax Credit allocation on or after
2 January 1, 2012, and has either a local service area that includes
3 one or more California communities or a California statewide
4 service area, but excluding qualified community development
5 entities with a national service area.

6 (II) A nonprofit organization shall meet all of the following
7 requirements: Is tax exempt under Section 23701, is registered
8 with the Registry of Charitable Trusts, which is administered by
9 the Attorney General, has articles of incorporation or articles of
10 organization that state the primary mission of the organization is
11 focused on improving the economic well-being of low-income
12 communities or individuals, and has bylaws that provide that the
13 organization maintains accountability to residents of low-income
14 communities through their representation on any governing board
15 or on an advisory board of the nonprofit organization.

16 (iv)

17 (iii) Priority shall be provided to both of the following:

18 (I) Applications that commit to addressing the hardest to serve
19 and undercapitalized lower income populations.

20 (II) Applications that support neighborhood revitalization
21 strategies driven by local grassroots stakeholders in multiple
22 low-income communities across one or more regions or the state.
23 These applications shall demonstrate how their investment activity
24 provides a scalable economic development model.

25 (D) For applications described in subparagraphs (A) and (B),
26 applications for awards shall include a commitment to make at
27 least 15 percent of qualified community development investments
28 to a qualified community development entity with the assistance
29 of a nonprofit organization, as documented by a cooperation
30 agreement that states the terms and conditions of that assistance.
31 For the purposes of this subparagraph, the following shall apply:

32 (i) A qualified community development entity shall be certified
33 under Section 45D of the Internal Revenue Code but has not
34 received a federal New Markets Tax Credit allocation on or after
35 January 1, 2012, and has either a local service area that includes
36 one or more California communities or a California statewide
37 service area, but excluding qualified community development
38 entities with a national service area.

39 (ii) A nonprofit organization shall meet all of the following
40 requirements: Is tax exempt under Section 23701, is registered

1 *with the Registry of Charitable Trusts, which is administered by*
2 *the Attorney General, has articles of incorporation or articles of*
3 *organization that state the primary mission of the organization is*
4 *focused on improving the economic well-being of low-income*
5 *communities or individuals, and has bylaws that provide that the*
6 *organization maintains accountability to residents of low-income*
7 *communities through their representation on any governing board*
8 *or on an advisory board of the nonprofit organization.*

9 ~~(D)~~

10 (E) (i) For applications described in subparagraph (A), in the
11 event requests for authority to designate qualified equity
12 investments exceed the applicable annual allocation limitation,
13 RTCA shall certify, consistent with remaining qualified equity
14 investment capacity, qualified equity investments of applicants in
15 proportionate percentages based upon the ratio of the amount of
16 qualified equity investments requested in such applications to the
17 total amount of qualified equity investments requested in all such
18 applications received on the same day.

19 (ii) If a pending request cannot be fully certified due to this
20 limit, RTCA shall certify the portion that may be certified unless
21 the qualified community development entity elects to withdraw
22 its request rather than receive partial certification.

23 ~~(E)~~

24 (F) An approved applicant may transfer all or a portion of its
25 certified qualified equity investment authority to its controlling
26 entity or any subsidiary qualified community development entity
27 of the controlling entity, provided that the applicant and the
28 transferee notify RTCA within 30 calendar days of such transfer
29 and include the information required in the application with respect
30 to such transferee with such notice. The transferee shall be subject
31 to the same rules, requirements, and limitations applicable to the
32 transferor.

33 ~~(F)~~

34 (G) Within 200 calendar days of RTCA sending notice of
35 certification, the qualified community development entity or any
36 transferee, under subparagraph~~(E)~~, (F), shall issue the qualified
37 equity investment and receive cash in the amount of the certified
38 amount. The qualified community development entity or transferee,
39 under subparagraph~~(E)~~, (F), shall provide RTCA with evidence
40 of the receipt of the cash investment within 205 calendar days of

1 the applicant receiving notice of certification. If the qualified
2 community development entity or any transferee, under
3 subparagraph ~~(E)~~, (F), does not receive the cash investment and
4 issue the qualified equity investment within 200 calendar days of
5 RTCA sending the certification notice, the certification shall lapse
6 and the entity may not issue the qualified equity investment without
7 reapplying to RTCA for certification. Lapsed certifications revert
8 back to RTCA and shall be reissued in the following order:

9 (i) First, pro rata to applicants whose qualified equity investment
10 allocations were reduced pursuant to subparagraph ~~(D)~~ (E) under
11 the annual allocation limitation of forty million dollars
12 (\$40,000,000) in paragraph (4) of subdivision (c).

13 (ii) Thereafter, in accordance with the application process.

14 ~~(G)~~

15 (H) A qualified community development entity that issues
16 qualified equity investments shall notify RTCA of the names of
17 taxpayers that are eligible to utilize tax credits pursuant to this
18 section and any transfer of a qualified equity investment.

19 (6) (A) A qualified community development entity that issues
20 qualified equity investments shall submit a report to RTCA that
21 provides documentation as to the investment of at least 85 percent
22 of the funds being deployed within one year in qualified
23 low-income community investments in qualified active low-income
24 community businesses located in California. Such report shall
25 include all of the following:

26 (i) A bank statement of such qualified community development
27 entity evidencing each qualified low-income community
28 investment.

29 (ii) Evidence that such business was a qualified active
30 low-income community business at the time of such qualified
31 low-income community investment.

32 (iii) Evidence that the community development entity complied
33 with subparagraph ~~(C)~~ (D) of paragraph (5).

34 ~~(iv) Evidence that each qualified low-income community~~
35 ~~investment was determined to have a positive revenue impact on~~
36 ~~the state. This requirement does not apply to reinvestments of~~
37 ~~redeemed qualified low-income investments.~~

38 ~~(v)~~

39 (iv) Any other information required by RTCA as being necessary
40 to meet the requirements of this section.

1 (B) Thereafter, the qualified community development entity
2 shall submit an annual report to RTCA during the seven years
3 following submittal of the report, pursuant to subparagraph (A).
4 No annual report shall be due prior to the first anniversary of the
5 initial credit allowance date. The report shall include, but is not
6 limited to, the following:

7 (i) The social, environmental, and economic impact the credit
8 had on the low-income community during the report period and
9 cumulatively.

10 (ii) The amount of moneys used for qualified low-income
11 investments in qualified low-income community businesses.

12 (iii) The number of employment positions created and retained
13 as a result of qualified low-income community investments and
14 the average annual salary of such positions.

15 (iv) The number of operating businesses assisted as a result of
16 qualified low-income community investments, by industry and
17 number of employees.

18 (v) Number of owner-occupied real estate projects.

19 (vi) Location of each qualified low-income community business
20 assisted by a qualified low-income community investment.

21 (vii) Summary of the outcomes of each of the revenue impact
22 assessments undertaken by the qualified community development
23 entity during the year.

24 (viii) Any other information requested by RTCA.

25 (e) (1) In the case where the credit allowed by this section
26 exceeds the tax described in Section 12201, the excess may be
27 carried over to reduce that tax in the following year, and the six
28 succeeding years if necessary, until the credit is exhausted.

29 (2) A taxpayer allowed a credit under this section for a qualified
30 equity investment shall not be eligible for any other credit under
31 this part with respect to that investment.

32 (3) The credit allowed under this section may be in addition to
33 any credit allowed under Section 45D of the Internal Revenue
34 Code.

35 (f) RTCA shall annually report on its Internet Web site the
36 information provided by low-income community development
37 entities and on the geographic distribution of the qualified active
38 low-income community businesses assisted.

39 (g) (1) The Insurance Commissioner may prescribe any rules
40 or regulations that may be necessary or appropriate to implement

1 this section. The Insurance Commissioner shall have access to any
2 documentation held by RTCA relative to the application and
3 reporting of a qualified community development entity.

4 (2) A qualified community development entity shall provide
5 RTCA with the name, address, and tax identification number of
6 each investor and entity for which a qualified equity investment
7 was designated by the qualified community development entity,
8 pursuant to this section. RTCA shall provide this information to
9 the Insurance Commissioner in a manner determined by the
10 Insurance Commissioner.

11 (h) (1) The credit authorized by this section shall only be
12 allowed for those taxable years for which moneys are appropriated
13 to RTCA to administer the California New Markets Tax Credit
14 pursuant to 18410.3 for that taxable year. The appropriation shall
15 specifically identify the California New Markets Tax Credit.

16 (2) For those taxable years for which those moneys are
17 appropriated pursuant to paragraph (1), RTCA shall post notice
18 of the appropriation on the homepage of its Internet Web site and
19 send notice of such appropriation to the Secretary of State and the
20 Legislative Counsel.

21 (i) This section shall be repealed on December 1, 2022.

22 SEC. 3. Section 17053.9 is added to the Revenue and Taxation
23 Code, to read:

24 17053.9. (a) There is hereby created the California New
25 Markets Tax Credit Program as provided in this section, Section
26 12283, and Section 23622.9. The purpose of this program is to
27 stimulate private sector investment in lower income communities
28 by providing a tax incentive to community and economic
29 development entities that can be leveraged by the entity to attract
30 private sector investment that in turn will be deployed by providing
31 financing and technical assistance to small- and medium-sized
32 businesses and the development of commercial, industrial, and
33 community development projects, including, but not limited to,
34 facilities for nonprofit service organizations, light manufacturing,
35 and mixed-use and transit-oriented development. RTCA shall
36 administer this program as provided in this section, Section 12283,
37 and Section 23622.9.

38 (b) (1) For taxable years beginning on or after January 1, 2017,
39 and before January 1, 2022, and subject to subdivision (h), there
40 shall be allowed as a credit against the "net tax," as defined in

1 Section 17039, in an amount determined in accordance with Section
2 45D of the Internal Revenue Code, relating to the new markets tax
3 credit, as modified in this section.

4 (2) For the purposes of this section, “RTCA” means the
5 Responsible Tax Credit Administrator, as designated by the
6 Governor.

7 (c) Section 45D of the Internal Revenue Code is modified as
8 follows:

9 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
10 applicable percentage, is modified by substituting for “(A) 5
11 percent with respect to the first 3 credit allowance dates, and (B)
12 6 percent with respect to the remainder of the credit allowance
13 dates” with the following:

14 (A) Zero percent with respect to the first two credit allowance
15 dates.

16 (B) Seven percent with respect to the third credit allowance
17 date.

18 (C) Eight percent with respect to the remainder of the credit
19 allowance dates.

20 (2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating
21 to qualified community development entity, is modified to only
22 include a qualified community development entity, that is certified
23 by the Secretary of the Treasury, and its subsidiary qualified
24 community development entities that have entered into an
25 allocation agreement with the Community Development Financial
26 Institutions Fund of the United States Treasury Department, with
27 respect to credits authorized by Section 45D of the Internal
28 Revenue Code, that includes California within the service area and
29 is dated on or after January 1, 2012.

30 (B) Section 45D(c)(2) of the Internal Revenue Code, relating
31 to special rules for certain organizations, is modified to only
32 include a specialized small business investment company or
33 community development financial institution that entered into an
34 allocation agreement with the Community Development Financial
35 Institutions Fund of the United States Treasury Department, with
36 respect to credits authorized by Section 45D of the Internal
37 Revenue Code, that includes California within the service area and
38 is dated on or after January 1, 2012.

1 (3) The term “qualified active low-income community business,”
2 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
3 modified as follows:

4 (A) By substituting “any low-income community in California”
5 for “any low-income community” every place it appears in Section
6 45D of the Internal Revenue Code.

7 (B) A qualified active low-income community business shall
8 not include any business that derives, or projects to derive, 15
9 percent or more of its annual revenue from the rental or sale of
10 real estate. This exclusion does not apply to a business that is
11 controlled by, or under common control with, another business if
12 the second business: (i) does not derive or project to derive 15
13 percent or more of its annual revenue from the rental or sale of
14 real estate; and (ii) is the primary tenant of the real estate leased
15 from the first business.

16 (C) A qualified active low-income community business shall
17 only include a business that, at the time the initial investment is
18 made, has 250 or fewer employees and is located in one or more
19 California low-income communities. The operating business shall
20 meet all other conditions of a qualified active low-income
21 community business, except as modified by this paragraph. This
22 requirement does not apply to a business that is located on land
23 and is controlled by, or under common control with, a federally
24 recognized tribe.

25 (D) A qualified active low-income community business shall
26 only include a business located in census tracts with a poverty rate
27 greater than 30 percent, or census tracts, if located within a
28 nonmetropolitan area, with a median family income that does not
29 exceed 60 percent of median family income for this state, or census
30 tracts, if located within a metropolitan area, with a median family
31 income that does not exceed 60 percent of the greater of the
32 California median family income or the metropolitan area median
33 family income, or census tracts with unemployment rates at least
34 1.5 times the national average.

35 (E) A qualified active low-income community business shall
36 not include any business that operates or derives revenues from
37 the operation of a country club, gaming establishment, massage
38 parlor, liquor store, or golf course.

39 (F) A qualified active low-income community business shall
40 not include a sexually oriented business. A “sexually oriented

1 business” means a nightclub, bar, restaurant, or similar commercial
2 enterprise that provides for an audience of two or more individuals
3 live nude entertainment or live nude performances where the nudity
4 is a function of everyday business operations and where nudity is
5 a planned and intentional part of the entertainment or performance.
6 “Nude” means clothed in a manner that leaves uncovered or visible,
7 through less than fully opaque clothing, any portion of the genitals
8 or, in the case of a female, any portion of the breasts below the
9 top of the areola of the breasts.

10 (G) A qualified active low-income community business shall
11 not include a charter school.

12 (4) Section 45D(f) of the Internal Revenue Code, relating to
13 national limitation on amount of investments designated, is
14 modified as follows:

15 (A) The following shall apply in lieu of the provisions of Section
16 45D(f)(1) of the Internal Revenue Code: The aggregate amount
17 of qualified equity investments that may be allocated in any
18 calendar year for purposes of this section, Section 12283, and
19 Section 23622.9 shall be forty million dollars (\$40,000,000) per
20 calendar year. The allocation of any undesignated qualified equity
21 investments shall be returned to RTCA by March 1 of the year
22 following allocation and the value of the undesignated qualified
23 equity investment shall be available for allocation in the following
24 calendar years in accordance with the application process. Any
25 qualified equity investment attributable to recaptured credits shall
26 be available to RTCA on March 1 of the year following recapture
27 and shall be available for allocation in the following calendar years
28 in accordance with clause (ii) of subparagraph (B) of paragraph
29 (5). Reallocated qualified equity investments attributable to
30 recapture credits shall not count against the annual or the
31 cumulative limit.

32 (B) The references to “the Secretary” in Section 45D(f)(2) of
33 the Internal Revenue Code, relating to allocation of limitation, is
34 modified to read “RTCA.”

35 (C) The last sentence of Section 45D(f)(3) of the Internal
36 Revenue Code, relating to carryover of unused limitation, shall
37 not apply.

38 (5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code,
39 relating to credit recapture amount, is modified to substitute
40 “Section 19101 of this code” for “Section 6621.”

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(i) The qualified community development entity fails to comply with subparagraph ~~(C)~~ (D) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit.

(ii) RTCA shall establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(iii) Recaptured qualified equity investments revert back to RTCA and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ (E) of paragraph (5) of subdivision (d) by the annual allocation limitation.

(II) Thereafter, in accordance with the application process.

(iv) Enforcement of each of the recapture provisions shall be subject to a six-month cure period.

(d) (1) RTCA shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation, monitoring, and management of the tax credit program authorized by this section.

(2) (A) RTCA shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. RTCA may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines, RTCA shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments, including, but not limited

1 to, its business strategy, targeted community outcomes,
2 capitalization strategy, and management capacity.

3 (C) Considers the qualified community development entity's
4 prior qualified low-income community investments under Section
5 45D of the Internal Revenue Code.

6 (D) Considers the qualified community development entity's
7 prior qualified low-income community investments under this
8 section, including subparagraph ~~(C)~~ (D) of paragraph (5).

9 (4) (A) Subject to subdivision (h), RTCA shall begin accepting
10 applications on or before May 15, 2017, and shall award authority
11 to designate qualified equity investments annually through ~~2022~~.
12 ~~2021~~.

13 (B) In the instance where RTCA determines that an application
14 is incomplete, the qualified community development entity shall
15 be given five business days to provide the omitted information.

16 (5) (A) In the 2017 awards cycle, RTCA shall award authority
17 to designate qualified equity investments to qualified community
18 development entities described in paragraph (2) of subdivision (c)
19 in the order applications are received by RTCA. Applications
20 received on the same day shall be deemed to have been received
21 simultaneously.

22 (B) In the 2018 to ~~2022~~ 2021 award cycles, inclusive, at least
23 60 percent of the authority to designate qualified equity investments
24 shall be awarded pursuant to subparagraph (A). At the discretion
25 of RTCA, a higher percentage of authority to designate qualified
26 equity investments may be awarded pursuant to subparagraph (A).

27 (C) RTCA shall award up to 40 percent of the authority to
28 designate qualified equity investments in the 2018 to ~~2022~~, 2021,
29 inclusive, award cycles, to qualified community development
30 entities on a competitive basis that meets the following criteria:

31 (i) Awards shall be reviewed using blind scoring and a review
32 committee that is composed of community development finance
33 practitioners and members having demonstrated experience in
34 assessing organizational business strategy, community outcomes,
35 capitalization strategy, and management capacity.

36 (ii) A member of the review committee shall not have a financial
37 interest, which includes, but is not limited to, asking, consenting,
38 or agreeing to receive any commission, emolument, gratuity,
39 money, property, or thing of value for his or her own use, benefit,
40 or personal advantage for procuring or endeavoring to procure for

1 any person, partnership, joint venture, association, or corporation
2 any qualified equity investment or other assistance from any
3 applicant.

4 ~~(iii) Applications for awards shall include a commitment to~~
5 ~~make at least 15 percent of qualified community development~~
6 ~~investments to a qualified community development entity with the~~
7 ~~assistance of a nonprofit organization as documented by a~~
8 ~~cooperation agreement that states the terms and conditions of that~~
9 ~~assistance. For the purposes of this clause, the following shall~~
10 ~~apply:~~

11 ~~(I) A qualified community development entity shall be certified~~
12 ~~under Section 45D of the Internal Revenue Code but has not~~
13 ~~received a federal New Markets Tax Credit allocation on or after~~
14 ~~January 1, 2012, and has either a local service area that includes~~
15 ~~one or more California communities or a California statewide~~
16 ~~service area, but excluding qualified community development~~
17 ~~entities with a national service area.~~

18 ~~(II) A nonprofit organization shall meet all of the following~~
19 ~~requirements: Is tax exempt under Section 23701, is registered~~
20 ~~with the Registry of Charitable Trusts, which is administered by~~
21 ~~the Attorney General, has articles of incorporation or articles of~~
22 ~~organization that state the primary mission of the organization is~~
23 ~~focused on improving the economic well-being of low-income~~
24 ~~communities or individuals, and has bylaws that provide that the~~
25 ~~organization maintains accountability to residents of low-income~~
26 ~~communities through their representation on any governing board~~
27 ~~or on an advisory board of the nonprofit organization.~~

28 ~~(iv)~~

29 ~~(iii) Priority shall be provided to both of the following:~~

30 ~~(I) Applications that commit to addressing the hardest to serve~~
31 ~~and undercapitalized lower income populations.~~

32 ~~(II) Applications that support neighborhood revitalization~~
33 ~~strategies driven by local grassroots stakeholders in multiple~~
34 ~~low-income communities across one or more regions or the state.~~
35 ~~These applications shall demonstrate how their investment activity~~
36 ~~provides a scalable economic development model.~~

37 ~~(D) For applications described in subparagraphs (A) and (B),~~
38 ~~applications for awards shall include a commitment to make at~~
39 ~~least 15 percent of qualified community development investments~~
40 ~~to a qualified community development entity with the assistance~~

1 of a nonprofit organization as documented by a cooperation
2 agreement that states the terms and conditions of that assistance.
3 For the purposes of this subparagraph, the following shall apply:

4 (i) A qualified community development entity shall be certified
5 under Section 45D of the Internal Revenue Code but has not
6 received a federal New Markets Tax Credit allocation on or after
7 January 1, 2012, and has either a local service area that includes
8 one or more California communities or a California statewide
9 service area, but excluding qualified community development
10 entities with a national service area.

11 (ii) A nonprofit organization shall meet all of the following
12 requirements: Is tax exempt under Section 23701, is registered
13 with the Registry of Charitable Trusts, which is administered by
14 the Attorney General, has articles of incorporation or articles of
15 organization that state the primary mission of the organization is
16 focused on improving the economic well-being of low-income
17 communities or individuals, and has bylaws that provide that the
18 organization maintains accountability to residents of low-income
19 communities through their representation on any governing board
20 or on an advisory board of the nonprofit organization.

21 ~~(D)~~

22 (E) (i) For applications described in subparagraph (A), in the
23 event requests for authority to designate qualified equity
24 investments exceed the applicable annual allocation limitation,
25 RTCA shall certify, consistent with remaining qualified equity
26 investment capacity, qualified equity investments of applicants in
27 proportionate percentages based upon the ratio of the amount of
28 qualified equity investments requested in such applications to the
29 total amount of qualified equity investments requested in all such
30 applications received on the same day.

31 (ii) If a pending request cannot be fully certified due to this
32 limit, RTCA shall certify the portion that may be certified unless
33 the qualified community development entity elects to withdraw
34 its request rather than receive partial certification.

35 ~~(E)~~

36 (F) An approved applicant may transfer all or a portion of its
37 certified qualified equity investment authority to its controlling
38 entity or any subsidiary qualified community development entity
39 of the controlling entity, provided that the applicant and the
40 transferee notify RTCA within 30 calendar days of such transfer

1 and include the information required in the application with respect
2 to such transferee with such notice. The transferee shall be subject
3 to the same rules, requirements, and limitations applicable to the
4 transferor.

5 ~~(F)~~

6 (G) Within 200 calendar days of RTCA sending notice of
7 certification, the qualified community development entity or any
8 transferee, under subparagraph ~~(E)~~, (F), shall issue the qualified
9 equity investment and receive cash in the amount of the certified
10 amount. The qualified community development entity or transferee,
11 under subparagraph ~~(E)~~, (F), shall provide RTCA with evidence
12 of the receipt of the cash investment within 205 calendar days of
13 the applicant receiving notice of certification. If the qualified
14 community development entity or any transferee, under
15 subparagraph ~~(E)~~, (F), does not receive the cash investment and
16 issue the qualified equity investment within 200 calendar days of
17 RTCA sending the certification notice, the certification shall lapse
18 and the entity may not issue the qualified equity investment without
19 reapplying to RTCA for certification. Lapsed certifications revert
20 back to RTCA and shall be reissued in the following order:

21 (i) First, pro rata to applicants whose qualified equity investment
22 allocations were reduced pursuant to subparagraph ~~(D)~~ (E) under
23 the annual allocation limitation of forty million dollars
24 (\$40,000,000) in paragraph (4) of subdivision (c).

25 (ii) Thereafter, in accordance with the application process.

26 ~~(G)~~

27 (H) A qualified community development entity that issues
28 qualified equity investments shall notify RTCA of the names of
29 taxpayers that are eligible to utilize tax credits pursuant to this
30 section and any transfer of a qualified equity investment.

31 (6) (A) A qualified community development entity that issues
32 qualified equity investments shall submit a report to RTCA that
33 provides documentation as to the investment of at least 85 percent
34 of the funds being deployed within one year in qualified
35 low-income community investments in qualified active low-income
36 community businesses located in California. Such report shall
37 include all of the following:

38 (i) A bank statement of such qualified community development
39 entity evidencing each qualified low-income community
40 investment.

1 (ii) Evidence that such business was a qualified active
2 low-income community business at the time of such qualified
3 low-income community investment.

4 (iii) Evidence that the community development entity complied
5 with subparagraph ~~(C)~~ (D) of paragraph (5).

6 ~~(iv) Evidence that each qualified low-income community~~
7 ~~investment was determined to have a positive revenue impact on~~
8 ~~the state. This requirement does not apply to reinvestments of~~
9 ~~redeemed qualified low-income investments.~~

10 ~~(v)~~

11 (iv) Any other information required by RTCA as being necessary
12 to meet the requirements of this section.

13 (B) Thereafter, the qualified community development entity
14 shall submit an annual report to RTCA during the seven years
15 following submittal of the report, pursuant to subparagraph (A).
16 No annual report shall be due prior to the first anniversary of the
17 initial credit allowance date. The report shall include, but is not
18 limited to, the following:

19 (i) The social, environmental, and economic impact the credit
20 had on the low-income community during the report period and
21 cumulatively.

22 (ii) The amount of moneys used for qualified low-income
23 investments in qualified low-income community businesses.

24 (iii) The number of employment positions created and retained
25 as a result of qualified low-income community investments and
26 the average annual salary of such positions.

27 (iv) The number of operating businesses assisted as a result of
28 qualified low-income community investments, by industry and
29 number of employees.

30 (v) Number of owner-occupied real estate projects.

31 (vi) Location of each qualified low-income community business
32 assisted by a qualified low-income community investment.

33 (vii) Summary of the outcomes of each of the revenue impact
34 assessments undertaken by the qualified community development
35 entity during the year.

36 (viii) Any other information requested by RTCA.

37 (e) (1) In the case where the credit allowed by this section
38 exceeds the “net tax,” the excess may be carried over to reduce
39 the “net tax” in the following year, and the six succeeding years
40 if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(3) The credit allowed under this section may be in addition to any credit allowed under Section 45D of the Internal Revenue Code.

(f) RTCA shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Franchise Tax Board shall have access to any documentation held by RTCA relative to the application and reporting of a qualified community development entity.

(2) A qualified community development entity shall provide RTCA with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualified community development entity, pursuant to this section. RTCA shall provide this information to the Franchise Tax Board in a manner determined by the Franchise Tax Board.

(h) (1) The credit authorized by this section shall only be allowed for those taxable years for which moneys are appropriated to RTCA to administer the California New Markets Tax Credit pursuant to 18410.3 for that taxable year. The appropriation shall specifically identify the California New Markets Tax Credit.

(2) For those taxable years for which those moneys are appropriated pursuant to paragraph (1), RTCA shall post notice of the appropriation on the homepage of its Internet Web site and send notice of such appropriation to the Secretary of State and the Legislative Counsel.

(i) This section shall be repealed on December 1, 2022.

SEC. 4. Section 18410.3 is added to the Revenue and Taxation Code, to read:

18410.3. (a) The California New Markets Tax Credit Fund is hereby established in the State Treasury.

(b) Upon annual appropriation, moneys in the fund shall be used for the purposes described in subdivision (d) of Section 12283,

subdivision (d) of Section 17053.9, and subdivision (d) of Section 23622.9.

SEC. 5. Section 23622.9 is added to the Revenue and Taxation Code, to read:

23622.9. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 12283, and Section 17053.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-sized businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. RTCA shall administer this program as provided in this section, Section 12283, and Section 17053.9.

(b) (1) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, and subject to subdivision (h), there shall be allowed as a credit against the “tax,” as defined in Section 23036, in an amount determined in accordance with Section 45D of the Internal Revenue Code, relating to the new markets tax credit, as modified in this section.

(2) For the purposes of this section, “RTCA” means the Responsible Tax Credit Administrator, as designated by the Governor.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for “(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates” with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating to qualified community development entity, is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code, relating to special rules for certain organizations, is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting “any low-income community in California” for “any low-income community” every place it appears in Section 45D of the Internal Revenue Code.

(B) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (i) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary tenant of the real estate leased from the first business.

(C) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph. This

1 requirement does not apply to a business that is located on land
2 and is controlled by, or under common control with, a federally
3 recognized tribe.

4 (D) A qualified active low-income community business shall
5 only include a business located in census tracts with a poverty rate
6 greater than 30 percent, or census tracts, if located within a
7 nonmetropolitan area, with a median family income that does not
8 exceed 60 percent of median family income for this state, or census
9 tracts, if located within a metropolitan area, with a median family
10 income that does not exceed 60 percent of the greater of the
11 California median family income or the metropolitan area median
12 family income, or census tracts with unemployment rates at least
13 1.5 times the national average.

14 (E) A qualified active low-income community business shall
15 not include any business that operates or derives revenues from
16 the operation of a country club, gaming establishment, massage
17 parlor, liquor store, or golf course.

18 (F) A qualified active low-income community business shall
19 not include a sexually oriented business. A “sexually oriented
20 business” means a nightclub, bar, restaurant, or similar commercial
21 enterprise that provides for an audience of two or more individuals
22 live nude entertainment or live nude performances where the nudity
23 is a function of everyday business operations and where nudity is
24 a planned and intentional part of the entertainment or performance.
25 “Nude” means clothed in a manner that leaves uncovered or visible,
26 through less than fully opaque clothing, any portion of the genitals
27 or, in the case of a female, any portion of the breasts below the
28 top of the areola of the breasts.

29 (G) A qualified active low-income community business shall
30 not include a charter school.

31 (4) Section 45D(f) of the Internal Revenue Code, relating to
32 national limitation on amount of investments designated, is
33 modified as follows:

34 (A) The following shall apply in lieu of the provisions of Section
35 45D(f)(1) of the Internal Revenue Code: The aggregate amount
36 of qualified equity investments that may be allocated in any
37 calendar year for purposes of this section, Section 12283, and
38 Section 17053.9 shall be forty million dollars (\$40,000,000) per
39 calendar year. The allocation of any undesignated qualified equity
40 investments shall be returned to RTCA by March 1 of the year

1 following allocation and the value of the undesignated qualified
2 equity investment shall be available for allocation in the following
3 calendar years in accordance with the application process. Any
4 qualified equity investment attributable to recaptured credits shall
5 be available to RTCA on March 1 of the year following recapture
6 and shall be available for allocation in the following calendar years
7 in accordance with clause (ii) of subparagraph (B) of paragraph
8 (5). Reallocated qualified equity investments attributable to
9 recapture credits shall not count against the annual or the
10 cumulative limit.

11 (B) The references to “the Secretary” in Section 45D(f)(2) of
12 the Internal Revenue Code, relating to allocation of limitation, is
13 modified to read “RTCA.”

14 (C) The last sentence of Section 45D(f)(3) of the Internal
15 Revenue Code, relating to carryover of unused limitation, shall
16 not apply.

17 (5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code,
18 relating to credit recapture amount, is modified to substitute
19 “Section 19101 of this code” for “Section 6621.”

20 (B) Section 45D(g)(3) of the Internal Revenue Code, relating
21 to recapture event, is modified to add the following:

22 (i) The qualified community development entity fails to comply
23 with subparagraph ~~(C)~~ (D) of paragraph (5) of subdivision (d). In
24 this case, recapture shall be 100 percent of the credit.

25 (ii) RTCA shall establish a process, in consultation with the
26 Franchise Tax Board, for the recapture of credits allowed under
27 this section from the entity that claimed the credit on a return.

28 (iii) Recaptured qualified equity investments revert back to
29 RTCA and shall be reissued. The reissue shall not count toward
30 the annual or cumulative allocation limitation. The reissue shall
31 be done in the following order:

32 (I) First, pro rata to applicants whose qualified equity investment
33 allocations were reduced pursuant to subparagraph ~~(D)~~ (E) of
34 paragraph (5) of subdivision (d) by the annual allocation limitation.

35 (II) Thereafter, in accordance with the application process.

36 (iv) Enforcement of each of the recapture provisions shall be
37 subject to a six-month cure period.

38 (d) (1) RTCA shall adopt guidelines necessary or appropriate
39 to carry out its responsibilities with respect to the allocation,

1 monitoring, and management of the tax credit program authorized
2 by this section.

3 (2) (A) RTCA shall establish and impose reasonable fees upon
4 entities that apply for the allocation pursuant to this subdivision
5 that in the aggregate defray the cost of reviewing applications for
6 the program. RTCA may impose other reasonable fees upon entities
7 that receive the allocation pursuant to this subdivision that in the
8 aggregate defray the cost of administering the program.

9 (B) The fees collected shall be deposited in the California New
10 Markets Tax Credit Fund established in Section 18410.3.

11 (3) In developing guidelines, RTCA shall adopt an allocation
12 process that does all of the following:

13 (A) Creates an equitable distribution process that ensures that
14 low-income community populations across the state have an
15 opportunity to benefit from the program.

16 (B) Sets minimum organizational capacity standards that
17 applicants must meet in order to receive an allocation of authority
18 to designate qualified equity investments, including, but not limited
19 to, its business strategy, targeted community outcomes,
20 capitalization strategy, and management capacity.

21 (C) Considers the qualified community development entity's
22 prior qualified low-income community investments under Section
23 45D of the Internal Revenue Code.

24 (D) Considers the qualified community development entity's
25 prior qualified low-income community investments under this
26 section, including subparagraph ~~(C)~~ (D) of paragraph (5).

27 (4) (A) Subject to subdivision (h), RTCA shall begin accepting
28 applications on or before May 15, 2017, and shall award authority
29 to designate qualified equity investments annually through ~~2022~~.
30 2021.

31 (B) In the instance where RTCA determines that an application
32 is incomplete, the qualified community development entity shall
33 be given five business days to provide the omitted information.

34 (5) (A) In the 2017 awards cycle, RTCA shall award authority
35 to designate qualified equity investments to qualified community
36 development entities described in paragraph (2) of subdivision (c)
37 in the order applications are received by RTCA. Applications
38 received on the same day shall be deemed to have been received
39 simultaneously.

1 (B) In the 2018 to-2022 *2021* award cycles, inclusive, at least
2 60 percent of the authority to designate qualified equity investments
3 shall be awarded pursuant to subparagraph (A). At the discretion
4 of RTCA, a higher percentage of authority to designate qualified
5 equity investments may be awarded pursuant to subparagraph (A).

6 (C) RTCA shall award up to 40 percent of the authority to
7 designate qualified equity investments in the 2018 to-2022, *2021*,
8 inclusive, award cycles, to qualified community development
9 entities on a competitive basis that meets the following criteria:

10 (i) Awards shall be reviewed using blind scoring and a review
11 committee that is composed of community development finance
12 practitioners and members having demonstrated experience in
13 assessing organizational business strategy, community outcomes,
14 capitalization strategy, and management capacity.

15 (ii) A member of the review committee shall not have a financial
16 interest, which includes, but is not limited to, asking, consenting,
17 or agreeing to receive any commission, emolument, gratuity,
18 money, property, or thing of value for his or her own use, benefit,
19 or personal advantage for procuring or endeavoring to procure for
20 any person, partnership, joint venture, association, or corporation
21 any qualified equity investment or other assistance from any
22 applicant.

23 ~~(iii) Applications for awards shall include a commitment to~~
24 ~~make at least 15 percent of qualified community development~~
25 ~~investments with the assistance of a nonprofit organization as~~
26 ~~documented by a cooperation agreement that states the terms and~~
27 ~~conditions of that assistance. For the purposes of this clause, the~~
28 ~~following shall apply:~~

29 ~~(I) A qualified community development entity shall be certified~~
30 ~~under Section 45D of the Internal Revenue Code but has not~~
31 ~~received a federal New Markets Tax Credit allocation on or after~~
32 ~~January 1, 2012, and has either a local service area that includes~~
33 ~~one or more California communities or a California statewide~~
34 ~~service area, but excluding qualified community development~~
35 ~~entities with a national service area.~~

36 ~~(II) A nonprofit organization shall meet all of the following~~
37 ~~requirements: Is tax exempt under Section 23701, is registered~~
38 ~~with the Registry of Charitable Trusts, which is administered by~~
39 ~~the Attorney General, has articles of incorporation or articles of~~
40 ~~organization that state the primary mission of the organization is~~

1 ~~focused on improving the economic well-being of low-income~~
2 ~~communities or individuals, and has bylaws that provide that the~~
3 ~~organization maintains accountability to residents of low-income~~
4 ~~communities through their representation on any governing board~~
5 ~~or on an advisory board of the nonprofit organization.~~

6 ~~(iv)~~

7 (iii) Priority shall be provided to both of the following:

8 (I) Applications that commit to addressing the hardest to serve
9 and undercapitalized lower income populations.

10 (II) Applications that support neighborhood revitalization
11 strategies driven by local grassroots stakeholders in multiple
12 low-income communities across one or more regions or the state.
13 These applications shall demonstrate how their investment activity
14 provides a scalable economic development model.

15 *(D) For applications described in subparagraphs (A) and (B),*
16 *applications for awards shall include a commitment to make at*
17 *least 15 percent of qualified community development investments*
18 *to a qualified community development entity with the assistance*
19 *of a nonprofit organization as documented by a cooperation*
20 *agreement that states the terms and conditions of that assistance.*
21 *For the purposes of this subparagraph, the following shall apply:*

22 *(i) A qualified community development entity shall be certified*
23 *under Section 45D of the Internal Revenue Code but has not*
24 *received a federal New Markets Tax Credit allocation on or after*
25 *January 1, 2012, and has either a local service area that includes*
26 *one or more California communities or a California statewide*
27 *service area, but excluding qualified community development*
28 *entities with a national service area.*

29 *(ii) A nonprofit organization shall meet all of the following*
30 *requirements: Is tax exempt under Section 23701, is registered*
31 *with the Registry of Charitable Trusts, which is administered by*
32 *the Attorney General, has articles of incorporation or articles of*
33 *organization that state the primary mission of the organization is*
34 *focused on improving the economic well-being of low-income*
35 *communities or individuals, and has bylaws that provide that the*
36 *organization maintains accountability to residents of low-income*
37 *communities through their representation on any governing board*
38 *or on an advisory board of the nonprofit organization.*

39 ~~(D)~~

1 (E) (i) For applications described in subparagraph (A), in the
2 event requests for authority to designate qualified equity
3 investments exceed the applicable annual allocation limitation,
4 RTCA shall certify, consistent with remaining qualified equity
5 investment capacity, qualified equity investments of applicants in
6 proportionate percentages based upon the ratio of the amount of
7 qualified equity investments requested in such applications to the
8 total amount of qualified equity investments requested in all such
9 applications received on the same day.

10 (ii) If a pending request cannot be fully certified due to this
11 limit, RTCA shall certify the portion that may be certified unless
12 the qualified community development entity elects to withdraw
13 its request rather than receive partial certification.

14 ~~(E)~~

15 (F) An approved applicant may transfer all or a portion of its
16 certified qualified equity investment authority to its controlling
17 entity or any subsidiary qualified community development entity
18 of the controlling entity, provided that the applicant and the
19 transferee notify RTCA within 30 calendar days of such transfer
20 and include the information required in the application with respect
21 to such transferee with such notice. The transferee shall be subject
22 to the same rules, requirements, and limitations applicable to the
23 transferor.

24 ~~(F)~~

25 (G) Within 200 calendar days of RTCA sending notice of
26 certification, the qualified community development entity or any
27 transferee, under subparagraph~~(E)~~, (F), shall issue the qualified
28 equity investment and receive cash in the amount of the certified
29 amount. The qualified community development entity or transferee,
30 under subparagraph~~(E)~~, (F), shall provide RTCA with evidence
31 of the receipt of the cash investment within 205 calendar days of
32 the applicant receiving notice of certification. If the qualified
33 community development entity or any transferee, under
34 subparagraph~~(E)~~, (F), does not receive the cash investment and
35 issue the qualified equity investment within 200 calendar days of
36 RTCA sending the certification notice, the certification shall lapse
37 and the entity may not issue the qualified equity investment without
38 reapplying to RTCA for certification. Lapsed certifications revert
39 back to RTCA and shall be reissued in the following order:

1 (i) First, pro rata to applicants whose qualified equity investment
2 allocations were reduced pursuant to subparagraph ~~(F)~~ (E) under
3 the annual allocation limitation of forty million dollars
4 (\$40,000,000) in paragraph (4) of subdivision (c).

5 (ii) Thereafter, in accordance with the application process.

6 ~~(G)~~

7 (H) A qualified community development entity that issues
8 qualified equity investments shall notify RTCA of the names of
9 taxpayers that are eligible to utilize tax credits pursuant to this
10 section and any transfer of a qualified equity investment.

11 (6) (A) A qualified community development entity that issues
12 qualified equity investments shall submit a report to RTCA that
13 provides documentation as to the investment of at least 85 percent
14 of the funds being deployed within one year in qualified
15 low-income community investments in qualified active low-income
16 community businesses located in California. Such report shall
17 include all of the following:

18 (i) A bank statement of such qualified community development
19 entity evidencing each qualified low-income community
20 investment.

21 (ii) Evidence that such business was a qualified active
22 low-income community business at the time of such qualified
23 low-income community investment.

24 (iii) Evidence that the community development entity complied
25 with subparagraph ~~(C)~~ (D) of paragraph (5).

26 ~~(iv) Evidence that each qualified low-income community~~
27 ~~investment was determined to have a positive revenue impact on~~
28 ~~the state. This requirement does not apply to reinvestments of~~
29 ~~redeemed qualified low-income investments.~~

30 ~~(v)~~

31 (iv) Any other information required by RTCA as being necessary
32 to meet the requirements of this section.

33 (B) Thereafter, the qualified community development entity
34 shall submit an annual report to RTCA during the seven years
35 following submittal of the report, pursuant to subparagraph (A).
36 No annual report shall be due prior to the first anniversary of the
37 initial credit allowance date. The report shall include, but is not
38 limited to, the following:

1 (i) The social, environmental, and economic impact the credit
2 had on the low-income community during the report period and
3 cumulatively.

4 (ii) The amount of moneys used for qualified low-income
5 investments in qualified low-income community businesses.

6 (iii) The number of employment positions created and retained
7 as a result of qualified low-income community investments and
8 the average annual salary of such positions.

9 (iv) The number of operating businesses assisted as a result of
10 qualified low-income community investments, by industry and
11 number of employees.

12 (v) Number of owner-occupied real estate projects.

13 (vi) Location of each qualified low-income community business
14 assisted by a qualified low-income community investment.

15 (vii) Summary of the outcomes of each of the revenue impact
16 assessments undertaken by the qualified community development
17 entity during the year.

18 (viii) Any other information requested by RTCA.

19 (e) (1) In the case where the credit allowed by this section
20 exceeds the “tax,” the excess may be carried over to reduce the
21 “tax” in the following year, and the six succeeding years if
22 necessary, until the credit is exhausted.

23 (2) A taxpayer allowed a credit under this section for a qualified
24 equity investment shall not be eligible for any other credit under
25 this part with respect to that investment.

26 (3) The credit allowed under this section may be in addition to
27 any credit allowed under Section 45D of the Internal Revenue
28 Code.

29 (f) RTCA shall annually report on its Internet Web site the
30 information provided by low-income community development
31 entities and on the geographic distribution of the qualified active
32 low-income community businesses assisted.

33 (g) (1) The Franchise Tax Board may prescribe any rules or
34 regulations that may be necessary or appropriate to implement this
35 section. The Franchise Tax Board shall have access to any
36 documentation held by RTCA relative to the application and
37 reporting of a qualified community development entity.

38 (2) A qualified community development entity shall provide
39 RTCA with the name, address, and tax identification number of
40 each investor and entity for which a qualified equity investment

1 was designated by the qualified community development entity,
2 pursuant to this section. RTCA shall provide this information to
3 the Franchise Tax Board in a manner determined by the Franchise
4 Tax Board.

5 (h) (1) The credit authorized by this section shall only be
6 allowed for those taxable years for which moneys are appropriated
7 to RTCA to administer the California New Markets Tax Credit
8 pursuant to 18410.3 for that taxable year. The appropriation shall
9 specifically identify the California New Markets Tax Credit.

10 (2) For those taxable years for which those moneys are
11 appropriated pursuant to paragraph (1), RTCA shall post notice
12 of the appropriation on the homepage of its Internet Web site and
13 send notice of such appropriation to the Secretary of State and the
14 Legislative Counsel.

15 (i) This section shall be repealed on December 1, 2022.

16 SEC. 6. For the purposes of complying with Section 41 of the
17 Revenue and Taxation Code, the Legislature finds and declares as
18 follows:

19 (a) Specific goals, purposes, and objectives: attract private sector
20 investment in lower income communities in California.

21 (b) Performance indicators:

22 (1) Amount of qualified low-income community investments
23 issued.

24 (2) Amount of dollars deployed in qualified low-income
25 community investments.

26 (3) Number of operating businesses assisted as a result of
27 qualified low-income community investments.

28 (4) Number of employment positions created and retained as a
29 result of qualified low-income community investments and the
30 average annual salary of those positions.

31 (c) Data collection requirements and baseline measurements:

32 (1) The baseline measurements include:

33 (A) The amount of tax credits issued in the year.

34 (B) The unemployment rate of the area.

35 (C) The poverty rate of the area.

36 (2) Data to collect includes:

37 (A) The amount of tax credits issued in the year.

38 (B) The number of operating businesses in a low-income
39 community assisted.

1 (C) The number of jobs created and retained as a result of
2 qualified low-income community investments.

3 SEC. 7. The provisions of this act are severable. If any
4 provision of this act or its application is held invalid, that invalidity
5 shall not affect other provisions or applications that can be given
6 effect without the invalid provision or application.

7 SEC. 8. This act provides for a tax levy within the meaning of
8 Article IV of the Constitution and shall go into immediate effect.

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